THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.8981 OF 1995

DATE: 12th September 2006

Between:
The Secretary, Waltair Club,
Visakhapatnam-3.

…. Petitioner.

And

1. The Industrial Tribunal-cum-
   Labour Court, Visakhapatnam,
   Rep. by its Presiding Officer and
   another.

…. Respondents.

* * *

ORDER:

This writ petition is directed against the Award dated 04.01.1995 passed in Industrial Dispute No.1 of 1992 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam.

2. Petitioner is the management. Respondent No.2 is the workman. According to the respondent No.2 he was appointed as Supervisor with effect from 08.3.1990 in the petitioner club at Visakhapatnam and he was looking after various works allotted to him. While so, his services were terminated with effect from 14.10.1991 vide proceedings dated 10.10.1991 without following procedure as required

under Section 25F of the Industrial Disputes Act (for short 'the Act').

3. In support of his claim, respondent No.2-workman examined himself as W.W.1 and marked documents Exs.W-1 to W-26. On behalf of petitioner-management M.W.1 was examined and Exs.M-1 and M-2 were marked.

4. After a detailed consideration of both oral and documentary evidence, the Tribunal came to the conclusion that the termination of the respondent No.2-workman with effect from 14.10.1991 is in utter violation of provisions of Section 25F of the Act, and therefore, held that the said termination is arbitrary and illegal and further directed the petitioner-management to reinstate the workman with continuity of service and full back wages. Aggrieved by the same, the present writ petition is filed.

5. There is no necessity of going into all the details. It is settled position of law that once the provisions of Section 25F of the Act are violated, the workman is entitled for reinstatement automatically with continuity of service and also back wages.

6. In this case the services of the workman were terminated on 10.10.1991 on the ground that he was

appointed as Civil Supervisor to look after the supervision of civil work undertaken by the management in the club and all the civil works have come to an end as a result of which the post held by the workman became surplus, therefore, he was informed that his services were terminated with effect from 14.10.1991 by way of retrenchment. Further, it was made clear that he was required to contact the office at any time during working hours for receiving terminal benefits, notice, pay etc., in settlement of his account. It was also further made clear that if the management finds it necessary the revival of the supervisory post in future, depending upon exigencies of civil work, he will be given preference for the same.

7. In a case of this nature, it is to be seen whether the claimant has collected the terminal benefits before 14.10.1991. Instead of collecting the benefits before 14.10.1991, on 12.10.1991 he addressed a letter seeking his continuation in the said post and ultimately did not receive the amounts from the management. However, this will not absolve the management from the obligation cast on it under Section 25F of the Act. But necessarily while holding that the termination order dated 10.10.1991 is illegal, the Labour Court ought to have taken into consideration the contents of the termination order. I am

of the opinion, that since the services of the workman were terminated without following statutory obligation under Section 25F of the Act, the ends of justice would be met by modifying the order of reinstatement with continuity of service and full back wages to that of granting of compensation equivalent to three years salary of the workman.

8. It is further interesting to notice that while admitting the writ petition this Court by an order-dated 28.4.1995 stayed all further proceedings pursuant to the Award-dated 04.1.1995. However, the said order was modified by an order- dated 10.7.1995 to the extent that there shall be stay of payment of back wages only. There shall be no stay of reinstatement. In view of this, the petitioner-management addressed several letters i.e., dated 08.8.1995 to the counsel for respondent No.2 in the Labour Court; dated 18.8.1995 which was acknowledged on 19.8.1995; dated 21.8.1995 again to the counsel for the respondent in the Labour Court; dated 18.9.1995 to the Labour Officer; dated 18.6.1996 to the Labour Officer; dated 04.12.1997 to the Labour Officer; dated 07.3.1998 to the workman and also to the Labour Officer; dated 12.6.1998 to the Labour Officer and dated 19.3.1999 to the Labour Officer. In all these letters the burden of song

of the petitioner-management is to persuade the petitioner to join duty as per the directions of this Court.

9. According to the learned counsel for the petitioner neither the workman reported for duty nor there is any reply and all this would show that the workman is not interested to join in the organization. However, learned counsel for workman vehemently opposed this aspect and stated that the workman made several efforts for joining duty, but still he was not permitted to do so. Of course, these facts have no relevance for the purpose of consideration of the very writ petition on merits, as noticed above.

10. For all the above reasons, the writ petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU, J.

Date: 12th September 2006.
BSB